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MINORITY REPORT

OF THE

COMMITTEE ON ELECTIONS

IN THE CONTESTED ELECTION CASE FROM

ALLEGANY COUNTY.

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MINORITY REPORT

OF THE

COMMITTEE ON ELECTIONS IN THE CONTESTED CASE FROM ALLEGANY COUNTY.

To the Honorable,

The House of Delegates of the State of Maryland.

The undersigned, a minority of the Committee on Eections, to whom was referred the memorial of William Devecmon and others of Allegany county, contesting the election of William R. McCulley and others, to seats in the House of Delegates, respectfully report:

That having carefully considered said memorial, and the testimony therewith presented, and the reply of the said Wm. R. McCulley and others, present the following as the principal points, for the consideration of your Honorable Body. In answer to the charges of the contestants, as submitted to the Committee on Elections, in the case as above mentioned:

Allegation 1st. That intimidation and threats were practiced on legal voters, by the Judges of Election in the several districts of the county, and by other persons, through the connivance and approval of said judges, which precluded, and prevented a large number of legal voters from voting for contestants, who would have voted for them, but for such threats and intimidation.

We have carefully examined the testimony as submitted on the part of the contestants, and found no testimony to sustain the charges as alleged in the said first allegation.

Allegation 2. The second allegation charges, that the said Judges of Election wilfully and fraudulently refused to permit registered voters to vote, &c.

This charge like the first is not sustained by the evidence; there being but one witness whose testimony goes to that point; and said witness was himself a candidate, and testified that the Judges of Election asked persons to vote the Radical

ticket, but does not state to which party these persons belonged.

Allegation 3. The third allegation charges, that at the polls in Election District No. 10, 16, 15, 14 and 2, sundry illegal voters, unregistered and non-resident were permitted by the Judges of Election to vote, &c.

It is in evidence on the part of the contestants, that in District No. 15, there was one vote cast by a person who was not registered, but in all of the other named districts, the contestants have utterly failed to produce any testimony to sustain said allegations.

Allegations 4 and 5. The fourth and fifth allegations charge that the election in Districts No. 4 and 1, were held at illegal and unusual, and improper places, &c.

While it is shown that the election was held in Districts No. 4 and 1, at different places from those at which they were held the previous year; yet there is no testimony to show, that they were held at unusual and improper places, or at places unknown to the public; neither is there any evidence to show that the judges were biased in favor of the sitting members, against the interest of the contestants, in holding the election at the above named places, which places were designated by the proper authorities, and not by the Judges of Election, as charged.

6th. The sixth allegation charges, that the Judges of Election were partial in the discharge of their duty, and were, and acted as partizans, &c.

The testimony offered to sustain this allegation, does not sustain the charges as alleged therein; and the Committee were unanimous in the opinion, that neither of the sitting members advised the Judges of Election to exclude any vote for contestants, as charged, &c.

7th. The seventh allegation charges, that each and every one of the witnesses hereinbefore named, and legal registered voters, entitled to vote at said election; that each of them attended the polls, in their respective Election Districts, on the day of election and tendered his ballot to the Judges of Election &c.

This allegation was duly considered by the committee and determined by a majority to be sustained; it being however in evidence, that there were four or more of said persons, who swore that they were either not at the polls, or if there, did not offer to vote.

8th. The eight allegation charges that a large number of persons, who were your partisans and friends, and voted for

you at said election, surrounded the polls, with arms and weapons, in Election District No. 10, on the morning of the election, and held the said polls all that day, and drove off by force, violence, threats and intimidation a large number of legal and registered voters, &c.

The charge that large numbers of armed men surrounded the polls in Election District No. 10, conspiring with the Judges, and acting under the counsel of the sitting members, threatening violence, with intent to intimidate persons from voting, thereby preventing a large number of duly registered voters from casting their ballots for the contestants, are unsupported by any testimony. It is shown that in this mountain region it is, and has been the custom of the people to take their guns with them. It is also fully shown that these armed men belonged to both parties; and it is further shown by contestants' witnesses that there was no intimidation or threats offered to any one, and that there was no quarreling or interference with voters; and that the election was an unusually peaceable one. It is also shown that many came armed fearing an assault by citizens from West Virginia and others. As they were disappointed in this, not a gun was fired or menacingly employed.

The next point, and that on which the majority rely upon as giving the contestants a right to seats in this Body is, that numerous registered, and consequently qualified voters, were rejected by the Judges of Election, amounting to fifty-one votes in all, to this the undersigned object. First, that the Constitution, Article first and section fourth, plainly defines the qualification of voters, and the Registration Law, chapter 174, sections six and fifteen, of the Laws of Maryland, 1865, plainly shows that the Registers of 1866 not only had no right to examine into the acts of the Registers of 1865, but positively forbids, under pains and penalties, their registering any man who the former Registers had entered in their register as disqualifie '.

We find, by examination of the record, that there were twenty-three names recorded who had been entered disqualified by the Registers of 1865, with witnesses to prove said facts. The undersigned cannot comprehend how, after the positive prohibitions of constitutional law, the majority can, by any true legal process, count said votes; and if the above reference to the Constitution and law is not sufficient to prove to this Honorable Body that the Judges of Election have the power to enquire into the fact whether a registered person, and specially one registered disqualified in 1865. We refer to Election Law, Article 35, section 9th, of the Code of Public General Laws, which says, that every Judge of Election, before he proceeds to take or receive any vote, shall take the follow-

ing oath: I do swear that I will permit all persons to vote who shall offer to poll at the election now to be held, who in my judgment shall, according to the directions contained in the Constitution and laws, be entitled to poll at same election, and that I will not permit any person to poll at the same election who is not in my judgment qualified to vote as aforesaid, and will in all things execute the office of Judge of Election according to the best of my knowledge, without favor or partiality, so help me God. Also, section 21 of same Article. These laws having never been repealed are the laws that govern the Judges of Election. That being the fact, where, we ask, is there any law to justify the counting of votes refused by Judges of Election, they being by law made sole judges of qualification of the voter, although he may have been registered.—[See the opinion of the Attorney General.]

In conclusion we object to counting any votes that were rejected by the Judges of said election, and recommend the following resolution:

Resolved, That the memorial of Wm. Devecmon and others, contesting the right of Wm. R. McCulley and others to seats as representatives in this Body, be and is hereby dismissed.

H. BAKER,
WM. A. WAMPLER,